

ATTACHMENT D

SOAH DOCKET NOS. 473-00-1167 and 473-00-1168

**PUC DOCKET NO. 22289
SOAH DOCKET NO. 473-00-1167**

APPLICATION OF WWC TEXAS RSA § LIMITED PARTNERSHIP FOR § DESIGNATION AS AN ELIGIBLE § TELECOMMUNICATIONS CARRIER § PURSUANT TO 47 U.S.C. § 214(e) AND § PUC SUBST. R. 26.418 §	PUBLIC UTILITY COMMISSION OF TEXAS
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**PUC DOCKET NO. 22295
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APPLICATION OF WWC TEXAS RSA § LIMITED PARTNERSHIP FOR § DESIGNATION AS AN ELIGIBLE § TELECOMMUNICATIONS PROVIDER § PURSUANT TO 47 U.S.C. § 214(e) AND § PUC SUBST. R. 26.417 §	PUBLIC UTILITY COMMISSION OF TEXAS
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ORDER

I. Introduction

This Order addresses the applications of WWC Texas RSA Limited Partnership (WWC) for designation as an eligible telecommunications carrier (ETC) pursuant to 47 U.S.C. § 214(e)¹ and P.U.C SUBST. R. 26.418 and an eligible telecommunications provider (ETP) pursuant to P.U.C. SUBST. R. 26.417. For the reasons discussed in this Order, the Public Utility Commission of Texas (Commission) finds that WWC has shown that it is entitled to be designated as both an ETC and an ETP. Except where inconsistent with this Order, the Commission adopts the Proposal for Decision filed by the State Office of Administrative Hearing's Administrative Law Judge on October 2, 2000, including the findings of fact and conclusions of law.

¹ Communications Act of 1934 § 214(e), 47 U.S.C.A. § 214(e) (West Supp. 2000).

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In making its decision in this matter, the Commission, in addition to ensuring compliance with statutory and regulatory requirements, was mindful of the effect of its decision on the competitiveness of the local telephone exchange market. As a matter of public policy, this Commission's actions should ensure that people have competitive opportunities they did not have before, not resulted in people losing existing competitive opportunities. Designating WWC as an ETC and ETP will afford people both choice for a local exchange carrier and increased access to enhanced services. As a result, customers in Texas are more likely to have lower prices, higher quality, and the rapid deployment of new telecommunications technologies. In addition, the Commission is unwavering in its support of a simple proposition: Rural Texans are not second class citizens and should not be deprived of competitive alternatives or access to new technologies. Finally, no citizen should be deprived of existing competitive opportunities as a result of implementing the Federal Telecommunications Act of 1996 (FTA).²

II. Discussion

A. Valor's RTC Status

At the time that WWC filed its application instituting this matter, the 197 exchanges at issue were owned by GTE Southwest, Inc. (GTE), a non-rural carrier. Subsequent to this filing, GTE and Valor Telecommunications of Texas, L.P. (Valor) entered into an agreement to transfer these exchanges from GTE to Valor. Valor then sought and was granted by the Commission a certificate of convenience and necessity and designation as an ETC and an ETP for these exchanges.³ This transaction was not closed until after the evidentiary record in this matter had

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified in scattered sections of Titles 15 and 47 of the U.S. Code) (FTA).

³ *Application of Valor Telecommunications of Texas, L.P. for Approval of Sale, Transfer or Merger, Issuance of a Certificate of Convenience and Necessity, Designation as an Eligible Telecommunications Provider, and Designation as an Eligible Telecommunications Carrier*, Docket No. 21834 (June 15, 2000).

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been closed.⁴ Also subsequent to WWC's application, Valor filed a self-certification as a "rural carrier."⁵

The discussion in the PFD related to whether Valor is a rural telephone company is adopted only in part. The ALJ, in places, seemed to reject Valor's claim that it was a rural telephone company, questioning both the methodology employed by Valor and the sufficiency of the evidence,⁶ and finding a "sound policy basis for ignoring" such a status.⁷ In other places the ALJ implied that Valor was a rural telephone company by discussing options that only have meaning if Valor is a rural telephone company.⁸ The ALJ then went on to state that the public interest inquiry will be preserved by not "denying Valor rural telephone company status."⁹ The Commission finds the discussion on this issue in the PFD to be confusing, contradictory, and unclear as to the ALJ's ultimate conclusion on this issue and the impact, if any, on this application.

The Commission agrees with the ALJ that the fact that the transaction between GTE and Valor happened when it did cannot justify rejection of WWC's application to serve customers in 119 former GTE exchanges. The Commission also agrees with the ALJ that the sale of exchanges should not create any possibility that carriers could game the universal support system and frustrate other carriers' ETC application.

Accordingly, the Commission concludes that for the purpose of determining designation as an ETC or an ETP, the status of the incumbent provider at the time that an application is filed

⁴ PFD at 4 (evidentiary record closed on July 31, 2000); Valor Reply Brief at 2-3 (Aug. 7, 2000) (closing scheduled for August 31, 2000; Valor to begin providing service on Sept. 1, 2000).

⁵ See Valor's Exceptions to the PFD at 3 (Oct. 3, 2000).

⁶ See PFD at 26.

⁷ See *Id.* at 29.

⁸ See *Id.* Where, for example, the ALJ recommends using the procedure to redefine a rural telephone company's service area.

⁹ *Id.*

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should be determinative on this issue. This requirement will foreclose the possibility that the sale of exchanges could be used to frustrate the entry of new competitive carriers or result in the manipulation of support levels. The use of the filing date as a bright line test precludes any sale of exchanges, whether made during the pendency of an application for designation or after the final decision, from having any anti-competitive effects. It would indeed be ironic if the federal law that was meant to usher in competition in telecommunications were construed to eliminate competitive alternatives and the spread of technological innovations.

In addition, the Commission concludes that Valor's reliance on 47 U.S.C. §153(37)(D) to substantiate its claim to be a rural telephone company (RTC) may be incorrect. This provision defines a RTC as any local exchange carrier that "has less than 15 percent of its access lines in communities of more than 50,000 on [February 8, 1996]." ¹⁰ Valor did not have a certificate from the state of Texas to serve any of the affected exchanges and was not a local exchange carrier on February 8, 1996. Customers in the subject exchanges were being served by GTE, which was not a RTC, on February 8, 1996. Although Congress placed the additional public interest finding and the full study area requirements upon competitors of *existing* RTCs, it would be inconsistent with the pro-competitive thrust of the entire Federal Telecommunications Act ¹¹ to carry those barriers to entry forward to new carriers that would meet the definition but for the February 8, 1996 date. It is also inconceivable that Congress would open the promise of competition for customers in a given exchange, only to allow it to be thwarted by a subsequent corporate transfer.

The Commission recognizes that this provision could be interpreted differently. The date limitation could be read as applying only to the population of communities or to both the number of access lines and the population. Reading the statute in this manner, however, will result in some instances to limit competition. Ultimately, the Federal Communications Commission (FCC) is likely to interpret this provision.

¹⁰ Communications Act § 3(37)(D); 47 U.S.C.A. § 153(37)(D).

¹¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified in scattered sections of Titles 15 and 47 of the U.S. Code) (FTA).

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Although the Commission has determined on other independent grounds that Valor is not a RTC for the purposes of this proceeding, the PUC is not suggesting—nor is it in favor of a determination—that Valor should not be treated as a rural carrier for purposes of determining support from the federal USF. In evaluating the rural status of a carrier, the Commission believes that one should differentiate between RTC and rural carrier, even though they are defined in an identical manner.¹² The latter is solely within the purview of the FCC and is for purpose of receiving universal service funding. The former is within the purview of this Commission and is for purposes of determining competitor ETC and ETP designations.¹³ There are interpretations other than the one favored by this Commission for purposes of competitive ETC designations that are available to the FCC when it ultimately decides Valor's status as a rural carrier.

As a separate and independent basis, the Commission adopts the ALJ's conclusion that the evidence in this record is inadequate to support a determination that Valor is a RTC.¹⁴ Accordingly, the PUC may not, as a matter of law, find that Valor is a RTC. Further, the PUC finds that, due to Valor's late intervention and its raising of this issue, Valor has the initial burden of producing evidence sufficient to make a *prima facie* showing that it meets the definition of RTC. Absent such a showing, no evidentiary burden passes to WWC. Consequently, it is the result of Valor's failure to meet its evidentiary burden that the PUC is legally precluded from finding that Valor is a RTC. The Commission's determination on this basis is independent of its imposition of the bright-line filing-date requirement and its view as to the proper construction of the definition of rural telephone company.

¹² See *In re: Federal-State Joint Board on Universal Service*, Report and Order in CC Docket No. 96-45, 12 FCC Rcd 8776, ¶ 310 (1997); Tenth Report and Order in CC Docket No. 96-45, 14 FCC Rcd 21156, ¶¶ 458,59 (1999).

¹³ See 47 U.S.C.A. § 214(e)(2).

¹⁴ See PFD at 26 & n.35.

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If any forum of competent jurisdiction, determines that Valor is a RTC and that it is Valor's status that is determinative of WWC's designation as an ETC, then the PUC will evaluate whether it is appropriate to redefine Valor's service area under 47 C.F.R. §54.207(c) on an exchange-by-exchange basis, as suggested by the ALJ. If the PUC determines that it is appropriate to redefine Valor's service area, it will file a petition with the FCC and seek its agreement.

To reflect the Commission's decisions on this issue, proposed Findings of Fact Nos. 10 and 33 are modified to reflect the timing of the transaction and that GTE was the incumbent exchange at the time WWC's application was filed; proposed Finding of Fact No. 37 is deleted because it is inconsistent with the Commission's determination of Valor's status for this proceeding; and new Conclusions of Law Nos. 17A, 17B, and 17C are added to reflect the Commission's decision on timing and burden of proof.

B. ETC Designation in Arkansas

Southwest Arkansas Telephone Cooperative (SATC) has one exchange in Texas and seven exchanges in Arkansas. WWC seeks designation in this proceeding only for the single Texas exchange. Noting that this Commission had previously designated SATC as an ETC and ETP only as to its Texas exchange,¹⁵ the ALJ recommended that the Commission approve WWC's designation as an ETC and ETP only for SATC's single Texas exchange.¹⁶ The ALJ also recommended that WWC be ordered to seek ETC designation in Arkansas and that its designation as an ETC in SATC's Texas exchange be conditioned upon receiving the designation in Arkansas.

The Commission declines to so condition WWC's ETC designation in Texas. The Commission concurs in the ALJ's conclusion that this aspect of WWC's application was dictated by consideration of state jurisdictional concerns. Imposing such a condition effectively

¹⁵ PFD at 25.

¹⁶ *Id.*

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precludes this Commission from exercising its independent authority to designate an ETC within the boundaries of Texas.¹⁷ Additionally, the attendant proceedings would unnecessarily delay a final resolution. To effectuate this position, proposed Ordering Paragraph 2 is deleted.

C. 150% of Tariffed Rate

To receive designation as an ETP, WWC is required to show that it will offer basic local telecommunications service at a rate not to exceed 150% of the ILEC's tariffed rate.¹⁸ The ALJ found that the tariffed rate meant "the total tariffed amount to be paid by the consumer of universal services, including all fees and charges"¹⁹ The Commission understands the ALJ's recommendation to be that "tariffed rate" includes all rates required to be paid under the ILEC's tariff in order to receive basic local service. Consequently, the exact meaning of "tariffed rate" will vary from ILEC to ILEC. It could, for example, include charges for EAS or ELCS if charges for one of these services was included as part of basic local service. But it cannot include any fees or charges that are not required by the ILEC's tariff in order to receive basic local service. With this understanding, the Commission adopts the ALJ's recommendation but modifies proposed Findings of Fact Nos. 41, 42 and 43 and Ordering Paragraph 5 to clarify this point.

In addition, the ALJ recommended that compliance be measured against the "ILEC's tariffed rate in each study area, for the rural ILECs, and for each exchange, for the non-rural ILECs."²⁰ The Commission disagrees with the ALJ and does not adopt the recommendation nor the implication that averaged rates may be used to demonstrate compliance for exchanges served by rural ILECs. The proper demonstration should be made on an exchange-by-exchange basis. This approach places this demonstration on an equivalent footing with support-level

¹⁷ See 47 U.S.C.A. § 214(e)(2).

¹⁸ P.U.C. SUBST. R. 26.417(c)(1)(B).

¹⁹ PFD at 38.

²⁰ *Id.* at 39-40.

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determinations. Proposed Ordering Paragraph 5 is modified to reflect that WWC's demonstration must be made on an exchange-by-exchange basis.

D. Eligibility of High-Priced Services for TUSF Funding

WWC sought in its exceptions clarification as to whether basic local service offerings priced higher than 150% of the ILEC's tariffed rate were eligible for TUSF support.²¹ The Commission concludes that services priced higher than 150% of the ILEC's tariffed rate are eligible for TUSF funding. WWC must provide at least one basic local service offering that is priced under the 150% level as a condition of being designated an ETP.²² Restricting support to exclude the higher priced services would serve only to limit the availability of competitive alternatives and new technologies and would not provide any additional protections.

E. Compliance Docket

The ALJ recommended a compliance docket be established to insure "the tariff and other required submissions are in compliance with the order."²³ The ALJ correctly recognized that "ETC and ETP designation only allows the carrier to become eligible for federal and state universal support funds."²⁴ Consequently, the Commission modifies proposed Ordering Paragraphs 4 – 9 (Commission Ordering Paragraph 3 a.-i.) to properly evaluate WWC's provision of basic local telecommunications service; compliance with Commission rules governing customer service, customer protection, Lifeline, Linkup, and Tel-Assistance; and correct delineation of designated exchanges prior to WWC receiving USF distributions. The Commission, further, determines this compliance docket is in the public interest and consistent with federal and state law and Commission rules.

²¹ WWC Exceptions to the Proposal for Decision at 6 (Oct. 6, 2000).

²² See P.U.C. SUBST. R. 26.417(c)(1)(B).

²³ PFD at 76.

²⁴ PFD at 58.

III. Changes to the PFD

The Commission makes the following additional changes to the proposed order:

Proposed Finding of Fact No. 45 is modified to reflect WWC's commitment to meet the requirement that it offer to provide basic local telecommunications service at a rate not to exceed 150% of the ILEC's tariffed rate as interpreted by the Commission.²⁵

Proposed Finding of Fact No. 62.h. is modified to make clear that WWC is required to comply with requirement in P.U.C. SUBST. R. 26.54(c)(5) that no fewer than 97% of properly dialed calls be completed.²⁶

Conclusion of Law No. 18A is added to reflect the Commission's decision in the preliminary order that WWC is a telecommunications provider.²⁷

IV. Findings of Fact

Background, Notice, and Procedural History

1. WWC Texas RSA Limited Partnership, a wholly-owned subsidiary of Western Wireless Corporation (collectively WWC), provides commercial mobile radio services (CMRS) primarily in rural areas of the United States. WWC provides its CMRS in Texas under the name CellularOne.
2. On March 15, 2000, WWC filed applications with the Texas Public Utility Commission (Commission) for designation as an Eligible Telecommunications Carrier (ETC) pursuant

²⁵ See WWC's Response to Exceptions at 15-16 (Oct. 10, 2000).

²⁶ See PFD at 45.

²⁷ See Preliminary Order at 8-9.

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to 47 U.S.C. § 214(c) and P.U.C. SUBST. R. 26.418 so as to be eligible to receive support from the Federal Universal Support Fund (FUSF), and as an Eligible Telecommunications Provider (ETP), pursuant to 47 U.S.C. § 214(e) and P.U.C. SUBST. R. 26.417, so as to be eligible to receive support from the Texas Universal Service Fund (TUSF).

3. WWC requested designation as an ETC and an ETP in the study areas of fourteen rural incumbent local exchange carriers (ILECs) and the local exchange areas of the three non-rural ILECs located within WWC's signal coverage area.
4. Notice of WWC's applications was issued by the Commission's Office of Policy Development, on behalf of the Commission, and published in the Texas Register on March 20, 2000.
5. On April 20, 2000, the Texas Telephone Association (TTA) and the Texas Statewide Telephone Cooperative, Inc. (TSTCI) filed motions to intervene in P.U.C. Docket No. 22289, WWC's application for ETC designation. TTA and TSTCI are associations that include the incumbent local exchange carriers (ILECs) designated as ETCs and ETPs in the areas WWC seeks ETC and ETP designation. Their motions to intervene were granted and TTA and TSTCI were represented jointly in the hearing in this matter.
6. The Commission docketed WWC's applications for ETC and ETP designation.
7. On May 1, 2000, The Commission referred WWC's applications to the State Office of Administrative Hearings.
8. On May 22, 2000, the Office of Public Utility Counsel (OPC) filed a motion to intervene in both dockets. OPC's motion to intervene was granted.
9. The administrative law judge (ALJ) consolidated the two dockets and submitted this

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single proposal for decision (PFD) for both dockets.

10. Valor Telecommunications of Texas (Valor) sought intervention by late-filed motion dated June 21, 2000. Subsequent to the filing of WWC's application, Valor purchased 197 exchanges previously owned by GTE. WWC has sought designation in 119 of the 197 exchanges purchased by Valor.
11. Valor's motion to intervene was granted, but its participation limited due to the delay in filing its motion.
12. On the first day of the hearing on the merits, OPC filed a motion to abate the proceedings based on an order issued by the Federal Communications Commission (FCC) on July 20, 2000. The ALJ denied OPC's motion and certified to the Commission questions related to whether the service for which WWC seeks ETC and ETP designation is properly regulated as commercial mobile radio service (CMRS).
13. The ALJ conducted an evidentiary hearing on the merits in this matter beginning on July 24, 2000, and concluding July 26, 2000. The record was left open until July 31, 2000.

Designation as an Eligible Telecommunications Carrier

14. WWC is a common carrier as required by 47 C.F.R. § 214(e)(1) and P.U.C. SUBST. R. 26.418(c), as that term is defined by 47 U.S.C. § 153(10).
15. WWC can and will offer voice grade access to the public switched network.
16. WWC can and will offer local usage.
17. WWC can and will offer dual tone multi-frequency signaling or its functional equivalent.

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18. WWC can and will offer single party service or its functional equivalent.
19. WCC can and will offer access to emergency services.
20. WWC can and will offer access to operator services.
21. WWC can and will offer access to interexchange service.
22. WWC can and will offer access to directory assistance.
23. WWC can and will offer toll limitation for qualifying low-income consumers.
24. WWC can and will advertise the availability of and charges for the supported services using media of general distribution.
25. WWC can and will make the supported services available throughout the requested designated service area.
26. WWC is not required to provide service throughout the proposed service area prior to designation as an ETC.
27. All carriers, but especially rural carriers, have pockets within their service areas where they have no customers or facilities. If development occurs, they have to build out to the new customer or customers.
28. WWC has equivalent or superior build-out capacity as the incumbents, and the potential need for build-out is therefore no reason to deny ETC status.

SATC Exchange

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29. Southwest Arkansas Telephone Cooperative (SATC) has one exchange in Texas and seven exchanges in Arkansas.
30. WWC has designated only the Texas SATC exchange in its applications for ETC and ETP designation.
31. There is no evidence that WWC's application for designation in SATC's only Texas exchange is for the purpose of allowing WWC to selectively service only high profitability/lower cost exchanges. The selection method involved was based exclusively on jurisdictional considerations.
32. Practical and jurisdictional considerations support granting WWC ETC and ETP status as to SATC's one Texas exchange. The Commission previously designated SATC an ETC and ETP only as to its one Texas exchange.

Valor Exchanges

33. WWC seeks designation in 119 of the 197 exchanges Valor purchased from GTE. GTE was the incumbent local exchange carrier (ILEC) for these 119 exchanges at the time WWC filed its application and on February 8, 1996. GTE was not a rural telephone company at the time WWC filed its application or on February 8, 1996.
34. There is no evidence that WWC's application for designation in only 119 of Valor's 197 exchanges is for the purpose of allowing WWC to selectively service only high profitability/lower cost exchanges.
35. The Commission granted Valor a CCN to provide local telephone exchange service and designated it as an ETC and an ETP subsequent to the time WWC filed its application. Likewise, the closing date of Valor's transaction with GTE and its self-designation as a rural telephone company post-date WWC's application for designation as an ETC.

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36. To allow Valor's transaction with GTE to bar granting WWC's applications for designation as an ETC and ETP would create a mechanism whereby carriers could frustrate other carriers' ETC and ETP applications through the artifice of proposing and consummating transfers of ownership of affected exchanges from non-rural to rural providers during the pendency of the Commission's consideration of a carrier's ETC and ETP applications.
37. DELETED.
38. Designation of WWC as an ETC in the study areas of the affected rural providers is the public interest.

Designation as an ETP

39. As a CMRS provider, WWC can and will be a telecommunications provider, as that term is used in P.U.C. SUBST. R. 26.417.
40. WWC has represented that it can and will comply with all of the following requirements of basic telephone service:
- Flat rate, single party residential and business local exchange telephone service, including primary directory listings;
 - Tone dialing service;
 - Access to operator service;
 - Access to directory assistance services;
 - Access to 911 service where provided by a local authority;
 - Dual party relay service;
 - The availability to report service problems seven days a week;
 - Availability of an annual local directory;
 - Access to toll services; and

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- Lifeline and tel-assistance services.
41. The term “tariffed rate” includes all rates required to be paid under the ILEC’s tariff in order for the consumer to receive basic local telecommunications service.
 42. The WWC rate to be compared to the ILEC tariffed rate on an exchange-by-exchange basis is the rate actually to be charged by WWC to consumers for basic local telecommunications service.
 43. Although a larger local calling area is generally of value, the record does not provide a basis for quantifying that value. Therefore, it is not proper to factor that value into an assessment of whether WWC has met the requirement that it offer to provide basic local telecommunications service at a rate not to exceed 150% of the ILEC’s tariffed rate on an exchange-by-exchange basis.
 44. A rate of \$14.99 figure proffered by WWC is not within 150% of the ILEC tariffed rate for all of the ILECs affected by WWC’s application for designation as an ETP.
 45. WWC has committed through sworn affidavit to meet the requirement that it offer to provide basic local telecommunications service at a rate not to exceed 150% of the ILEC’s tariffed rate as interpreted by the Commission, which is on an exchange-by-exchange basis.
 46. WWC has demonstrated that it can and will provide the required basic service through its own facilities, purchased unbundled network elements, or a combination and/or resale.
 47. WWC can and will provide continuous and adequate service in compliance with the quality of service standards defined and codified in P.U.C. SUBST. R. 26.52-26.54, as required by P.U.C. SUBST. R. 26.417(c)(1)(D), to the extent the terms of those rules are applicable to wireless providers.

48. WWC's wireless technology does not employ central offices.
49. The crux of the quality of service requirement established by P.U.C. SUBST. R. 26.52 is the availability of emergency reserve power of a minimum of four hours.
50. There is nothing in the record to distinguish wireless service from wireline service in terms of the requirement of an emergency reserve power source.
51. WWC switches have eight hours of battery reserve.
52. All WWC mobile switching stations have on-site generators to provide emergency power.
53. WWC can comply, and has committed to complying, with a requirement of a minimum of four hours of battery reserve.
54. P.U.C. SUBST. R. 26.53 requires the adoption of a program of periodic tests, inspections, and preventive maintenance, some of which are written in terms applicable only to wireline carriers.
55. The underlying requirement of P.U.C. SUBST. R. 26.53 is the adoption of an appropriate and adequate program of periodic tests, inspections, and preventive maintenance.
56. There is no evidence in the record to warrant restricting these requirements to wireline carriers.
57. WWC maintains a program and procedures for periodic tests, inspections, and preventive maintenance.

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58. WWC's program of inspections and tests include monthly, quarterly, and annual reviews, and WWC conducts viability tests of its circuits.
59. WWC service technicians are available at all times.
60. WWC can comply, and has committed to complying, with the requirements of P.U.C. SUBST. R. 26.53 described in Finding of Fact No. 55.
61. P.U.C. SUBST. R. § 26.54 prescribes numerous service objectives and performance benchmarks, some of which are written in terms applicable only to wireline carriers.
62. WWC can and will either meet the requirements of P.U.C. SUBST. R. 26.54 that are reasonably made applicable to wireless providers, or can and will provide some functional equivalent thereof. Specifically, and as to the subsections of P.U.C. SUBST. R. 26.54 that are applicable to WWC:
 - a. WWC makes available to all subscribers a dedicated message path for single party service, as required by P.U.C. SUBST. R. 26.54(b)(1).
 - b. All WWC switched voice circuits will be designed and maintained to allow transmission of at least 14,400 bits of data per second by the end of 2002.
 - c. WWC can and will submit the quarterly report described by P.U.C. SUBST. R 26.54(c).
 - d. WWC can provide service to one hundred percent of its customers within forty-eight (48) hours, and activate service within one hour of the time a customer places an order for service.
 - e. WWC can provide customers with a definite due date for onsite premises visits and schedule an appointment period not to exceed a four-hour time period on the due date, as required by P.U.C. SUBST. R 26.54(c)(1)(G).

- f. WWC meets the applicable standards for the adequacy of and promptness of toll and assistance operator calls, repair calls, and directory assistance calls through the performance of these services by Southwestern Bell Telephone.
- g. WWC always provides immediate access to dial tones or the equivalent, and thereby satisfies the requirements of P.U.C. SUBST. R. 26.54(c)(3)(A).
- h. P.U.C. SUBST. R. 26.54(c)(5) provides a benchmark for completion of properly dialed calls. Although the requirements of this subsection are written in terms of trunks and related switching equipment, and therefore appear inapplicable to WWC's wireless technology, WWC should, nonetheless, be required to comply with the aspect of this subsection that requires completing no less than ninety-seven percent (97%) of properly dialed calls.
- i. The benchmarks for carrier service in terms of number of customer trouble reports and responses thereto established by P.U.C. SUBST. R. 26.54(c)(6) are not technology specific and there is no evidence to support a finding that WWC should be exempted from these requirements. Therefore, WWC should be required to comply with this requirement.
- j. The terms of P.U.C. SUBST. R. 26.54(c)(7) regarding transmission requirements for all voice grade trunk facilities are inapplicable to WWC because WWC does not employ trunk facilities.
- k. P.U.C. SUBST. R. 26.54(c)(7)(B) provides a standard for decibel loss on direct distance dialing. Although it is not clear from the evidence whether it is possible to measure decibel loss on wireless transmissions, making such a requirement applicable to wireless carriers, if feasible, would provide wireless customers with an assurance of service quality comparable to that enjoyed by wireline customers. Likewise, the impulse noise limits set forth in section 26.54(c)(7)(E), although written in terms of wireline technology, provide valuable service quality requirements.
- l. The evidence does not show whether it is possible to measure decibel loss and impulse noise on wireless service.

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63. WWC has committed to participate in Lifeline, Link Up, and Tel-assistance at no charge as part of its universal service offering.
64. WWC has committed to advertising the availability of supported services in a manner that fully informs the general public within the designated service areas. WWC currently advertises through newspaper, television, radio, and billboard advertising and has committed to using these same media of general distribution to advertise its universal service offering to business and residential consumers in the designated service area.
65. The Texas Legislature and the United States Congress have clearly articulated a policy in favor of competitive telecommunications choices for citizens in *all* areas of the country—not just in urban areas.
66. The benefits competition is hoped to bring include lower prices, higher quality, and the rapid deployment of new telecommunications technologies.
67. Fundamental goals of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the Act), and federal and state telecommunications policy, is to preserve and advance universal service.
68. The availability of quality telecommunications services at just, reasonable, and affordable rates, and the deployment of advanced telecommunications and information services to all regions of the Nation, including rural and high cost areas, are implicit goals encompassed by the fundamental purposes of the Act.
69. The availability of WWC as a second provider, which might not occur in the absence of the requested designations, will bring a choice of providers to consumers in rural areas, many of whom are now served by a single provider.
70. This choice of providers can reasonably be expected to provide consumers with a greater

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range of service choices and pricing driven by the market place, rather than the monopolistic needs of a single provider.

71. Prohibiting WWC's ability to provide telecommunications service because of the alleged effect on incumbent providers would violate section 253(a) of the Act.
72. Subjecting WWC to a public interest test based in part on the effect of the designation up the incumbent providers is not competitively neutral, in that it favors the incumbent provider.
73. Prohibiting WWC's ability to provide telecommunications service because of the alleged effect on incumbent providers would be contrary to the universal service goals of section 254(b) of the Act.
74. The evidence in this case does not prove that any affected area is unable to support more than one ETC.
75. Statutory tools are available to the Commission, including the Additional Financial Assistance provisions of P.U.C. SUBST. R. 26.408, to be used, if necessary and appropriate, to ameliorate the effects on incumbent providers of WWC's designation as an ETC and ETP.
76. WWC will provide basic local telephone service.
77. P.U.C. SUBST. R. 26.21(a) specifically makes the following provisions applicable to all providers of basic local telephone service: Section 26.23(a)(5) and (c)(5) (relating to Refusal of Service), Section 26.24(f)(1) and (3) (relating to Credit Requirements and Deposits), Section 26.27(j) (relating to Bill Payment and Adjustments), and Section 26.28(b)(1), (b)(6), (c)(3), (d)(5), (h)(6), (i), and (j) (relating to Suspension or Disconnection of Service).

78. The state's application of the consumer protection rules listed in P.U.C. SUBST. R. 26.21(a) to WWC does not violate section 253 of the Act, and these consumer protection measures are therefore applicable to WWC.
79. WWC is not a dominant carrier or DCTU, as those terms are used in the Commission's Substantive Rules.
80. To subject WWC to regulatory requirements applicable only to dominant carriers and DCTUs would not be competitively neutral. However, it is appropriate to require WWC to comply with those provisions applicable to DCTUs that are also applicable to ETPs.
81. The public interest will be served by granting WWC's applications for designation as an ETC and an ETP.
82. The service that is the subject of WWC's applications shall be treated as mobile service and therefore entitled to the exemptions from state law accorded CMRS by federal law.
83. If WWC's service is ultimately determined by the FCC to be fixed, the Commission has established a procedure to permit WWC to seek the certification that would be required and to otherwise come into compliance with the state law that would be applicable. *See Order on Certified Issues at 2.*
84. WWC's current mobile cellular service does not comply with the requirements for designation. To the contrary, the provision of the required services and demonstration of compliance with the applicable requirements is keyed to the wireless access unit (WAU).
85. The WAU is different in character and abilities from the cellular handset.

V. Conclusions of Law

1. The Commission has jurisdiction over this docket pursuant to the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (Act), 47 U.S.C. § 214(e)(6), and the Public Utility Regulatory Act (PURA) §§ 52.001 *et seq.*
2. The notice provided in this docket is sufficient, pursuant to P.U.C. PROC. 22.55 and P.U.C. SUBST. R. 26.417(f)(1) and 26.418(g)(1).
3. SOAH has jurisdiction over all matters relating to the conduct of the hearing in this proceeding, including the preparation of a Proposal for Decision with Findings of Fact and Conclusions of Law in accordance with PURA § 14.053 and TEX. GOV'T CODE ANN. § 2003.049 (Vernon 2000).
4. The designation of a telecommunications provider as an ETC is the responsibility of the Commission. 47 C.F.R. § 54.201(b).
5. Only carriers designated ETCs are eligible for FUSF support. 47 C.F.R. § 54.201(a).
6. The TUSF was established to implement a competitively neutral mechanism to enable all residents to obtain basic telecommunications services. P.U.C. SUBST. R. 26.401(a).
7. Only providers designated ETPs are eligible for TUSF support.
8. The Commission has determined that the service offering that is the subject of these consolidated dockets is to be regulated as commercial mobile radio service (CMRS) that is not fixed and is generally exempt from the provisions of PURA. Preliminary Order at 9.

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9. Although a CMRS provider is generally exempt from the provisions of PURA, a CMRS provider that seeks universal support funding must comply with the rules and laws applicable to ETCs and ETPs.
10. Designation as an ETC is contingent upon a finding that the carrier satisfies the requirements of 47 C.F.R. § 54.201(d).
11. The Commission's Substantive Rule 26.418 incorporates the federal requirements for ETC designation.
12. To be designated an ETC, a carrier must reasonably demonstrate its ability and willingness to provide the services required of an ETC.
13. Requiring carriers to provide the services supported by the FUSF prior to designation as an ETC has the effect of prohibiting the ability of prospective market entrants from providing telecommunications services in violation of Section 253(a) of the Act. Even though such a requirement might be said to apply equally to both new entrants and incumbent LECs, the effect of such a requirement is not competitively neutral and that the requirement is therefore preempted by federal law.
14. Based on Conclusions of Law Nos. 12 and 13, a carrier's designation as an ETC is dependent on offering, rather than providing, the supported services.
15. A carrier's receipt of universal support funds is dependent on the carrier's provision of the supported services.
16. A carrier may make the required showing of offering the supported services by a description of the proposed service technology, a demonstration of the extent to which the carrier provides telecommunications services within the state, a description of the extent to which the carrier has entered into interconnection and resale agreements with

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others, a sworn affidavit signed by the carrier's representative to ensure compliance, or other means that demonstrate the carrier's ability and willingness to provide service upon designation.

17. The Commission's jurisdiction over Southwest Arkansas Telephone Cooperative (SATC) is limited to SATC's one service area located within Texas.
- 17A. The status of the ILEC at the time of filing of an application for designation as an ETC or ETP controls for purposes of determining whether the ILEC is a rural telephone company in a proceeding considering the application of a competing ETC or ETP.
- 17B. Due to the timing of Valor's intervention and its raising of the rural telephone company issue, Valor had the initial burden of producing evidence sufficient to make a *prima facie* showing that it was a rural telephone company. Valor failed to adduce evidence sufficient to meet its burden.
- 17C. For purposes of this proceeding, neither GTE nor Valor is a rural telephone company.
18. Based on Findings of Fact Nos. 14-38 and 81, WWC has satisfied the federal and state requirements for designation as an ETC including requirements of 47 C.F.R. § 54.201(d) and P.U.C. SUBST. R. 26.418.
- 18A. WWC is a telecommunications provider. *See* Preliminary Order at 8-9.
19. Although designation as an ETP is contingent on a finding that the telecommunications provider has been designated an ETC, the Commission has ruled that "the administrative streamlining mandate reflected in the aggressive timetables set forth in SUBST. R. 26.417(f) and 26.418(g) requires that these and future such applications move forward simultaneously." Preliminary Order at 9.

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20. P.U.C. SUBST. R. 26.52 through 26.54 are applicable to all ETPs, regardless of whether the ETP is also a dominant certificated telecommunications utility (DCTU).
- 20A. Basic local services that exceed 150% of the ILEC's tariffed rate are eligible for TUSF funding so long as WWC also offers basic local services that do meet the requirements of P.U.C. SUBST. R. 26.417(c)(1)(B).
21. Pursuant to P.U.C. SUBST. R. 26.52 and 26.417(c)(1)(D), WWC must provide a minimum of four hours of battery reserve without voltage falling below the level required for proper operation of all equipment.
22. P.U.C. SUBST. R 26.53 is inapplicable to wireless carriers, however, WWC is subject to the requirement that it adopt a program of periodic tests, inspections, and preventive maintenance aimed at achieving efficient operation of its system and rendition of safe, adequate, and continuous service," as required by P.U.C. SUBST. R. 26.53.
23. P.U.C. SUBST. R 26.54 is inapplicable to wireless carriers, however, WWC is subject to the service objectives and performance benchmarks of P.U.C. SUBST. R. 26.54, which are written in terms reasonably applicable only to wireless carriers, as described in Finding of Fact No. 62.
24. WWC must submit the quarterly report described by section 26.54(c).
25. WWC's ETP designation is dependent upon its advertising both the availability and the charges for the supported services and that WWC has committed to comply with this requirement.
26. Section 214(e)(2) of the Act and P.U.C. SUBST. R. 26.418(e)(2) require the Commission to determine whether the designation of an additional ETC in an area served by a rural telephone company is in the public interest. P.U.C. SUBST. R. 26.417(d)(2) requires a

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finding that designation of an ETP in an area served by a rural carrier is in the public interest.

27. The Commission's analysis of the public interest is guided by the fundamental goal of preserving and advancing universal service, and the component goals of ensuring the availability of quality telecommunications services at just, reasonable, and affordable rates, and the deployment of advanced telecommunications and information services to all regions of the Nation, including rural and high cost areas.
28. Section 253(a) of the Act is violated by any state provision that prohibits or has the effect of prohibiting the ability of any entity to provide interstate or intrastate telecommunications service.
29. Section 253(a) does not affect a state's ability to impose, on a competitively neutral basis and consistent with section 254 of the Act, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. 47 U.S.C. § 253(b).
30. DELETED.
31. Regulation based on the alleged effect of WWC's designation upon existing providers, even when viewed through the rubric of the potential downstream effect on consumers, is preempted by section 253 of the Act.
32. WWC is subject to the consumer protection rules listed in P.U.C. SUBST. R. 26.21(a)(2).
33. WWC is not subject to consumer protection rules, other than those expressly made applicable to it by P.U.C. SUBST. R. 26.21(a)(2) and 26.417.

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34. Based on Findings of Fact Nos. 39-82, WWC has satisfied the state requirements for designation as an ETP including P.U.C. SUBST. R. 26.217 and the applicable customer protection rules in P.U.C. SUBST. R. 26.21(a)(2).

VI. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following Order:

1. WWC's applications for ETC and ETP designation are granted. This designation of WWC as an ETC and ETP is not extended to WWC's current cellular services.
2. The Commission establishes a compliance docket to handle the following required compliance filings. The purpose of the compliance docket is to evaluate WWC's provision of service prior to WWC receiving universal service fund (USF) disbursements. Because WWC is a new entrant in the local telecommunications market, and is not currently provisioning service, it is in the public interest to require WWC to make further filings detailing how it is provisioning supported services. All compliance filings shall be filed in Project Control Number 23107, and shall be styled: COMPLIANCE TARIFF AND RELATED MATERIALS Pursuant to Final Order in P.U.C. Docket Nos. 22289 and 22295, SOAH Docket Nos. 473-00-1167 and 473-00-1168, *Compliance Filing Pursuant to the Final Order in P.U.C. Docket Nos. 22289 and 22295*. Each filing shall include a transmittal letter stating that the tariff and other required submissions are in compliance with the order, giving the docket number, date of the order, a list of all documents filed, if any, and any other necessary information. The timetable for review of the compliance submission shall be established by the P.U.C. ALJ assigned to the compliance docket. In the event any compliance submissions are modified or rejected, the applicant shall file proposed revisions in accordance with the P.U.C. ALJ's notice. The effective date of compliance shall be as determined in the written notice of approval by the P.U.C. ALJ. All subsequent filings in connection with the compliance plan (i.e.,

requests for extensions, textual corrections, revisions) shall be filed in the same Project Control No. provided above, and styled as set forth above.

- a. Within thirty days of issuance of this order, WWC shall file a detailed description of its basic local telecommunications service offering as described in P.U.C. SUBST. R. 26.417(c)(1). The filing should specifically offer all of the components of basic local telephone service described in FOF 40.
- b. Within thirty days of issuance of this order, WWC shall file a tariff detailing the content, pricing, and terms and conditions of WWC's universal offering. The tariffed rate shall be within 150% of the tariffed rate charged by the ILEC for basic local telecommunications services, including any mandatory EAC and/or ELCS fees, in each of the 119 exchanges.
- c. Within thirty days of issuance of this order, WWC shall submit evidence of its commitment to comply with the requirements of P.U.C. SUBST. R. 26.52-26.54, as set forth in Findings of Fact Nos. 47-61 and shall submit quarterly service quality performance reports, as required by P.U.C. SUBST. R. 26.54(c).
- d. Within thirty days of issuance of this order, WWC shall submit either a proposal for measuring decibel loss and impulse noise, or a representation that it is not possible to make this sort of measurement in a wireless context.
- e. Within thirty days of issuance of this order, WWC shall file a plan to comply with the customer protection rules relating to Non-dominant Certified Telecommunications Utilities (NCTUs) in P.U.C. SUBST. R. 26, Subchapter B.
- f. Within thirty days of issuance of this order, WWC shall file its advertising plan.
- g. Within thirty days of issuance of this order, WWC shall file a listing of all the

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services it will provided in order to obtain an ETC designation under P.U.C. SUBST. R. 26.418 and described in FOFs 15-23.

- h. Within thirty days of issuance of this order, WWC shall file sufficient information that correctly delineates the exchange boundaries for all of the exchanges designated by WWC.
 - i. Within thirty days of issuance of this order, WWC shall file a detailed description of its Lifeline, Linkup, and Tel-Assistance services as required for ETC and ETP designations.
- 3. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, not expressly granted herein, are denied for want of merit.

SIGNED AT AUSTIN, TEXAS the _____ day of October 2000.

PUBLIC UTILITY COMMISSION OF TEXAS

PAT WOOD, III, CHAIRMAN

JUDY WALSH, COMMISSIONER

BRETT A. PERLMAN, COMMISSIONER